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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**

8 FERRILL J. VOLPICELLI,

9 *Petitioner,*

10 vs.

11 JACK PALMER, *et al.*,

12 *Respondents.*
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3:10-cv-00005-LRH-VPC

ORDER

15 Following upon petitioner's motion (#47) for partial dismissal of the claims held by the Court
16 to be unexhausted,

17 IT IS ORDERED that petitioner's motion (#47) for partial dismissal is GRANTED and that the
18 following claims are DISMISSED without prejudice:

- 19 (a) Grounds 1 through 6, 10, 12 through 17, and 19 through 22;
20 (b) all claims in Ground 7 **other than** the claim that petitioner was
21 denied effective assistance of counsel when trial counsel failed
22 to protect him from an allegedly excessive restitution order by
23 the sentencing court;
24 (c) all claims in Ground 8 **other than** the claim that petitioner was
25 denied effective assistance of counsel when trial counsel allowed
26 him to be subjected to an indictment that allegedly contained
27 multiplicitous and duplicitous charges, violating his right to be
28 free from double jeopardy;

- 1 (d) any and all claims remaining in Ground 9 following upon the
2 Court's dismissal of the claim of ineffective assistance of
3 counsel in Ground 9;
- 4 (e) all claims in Ground 11 **other than** the claim that petitioner was
5 denied effective assistance of counsel when trial counsel failed
6 to impeach accomplice Brett Bowman's allegedly inconsistent
7 and/or perjured testimony with his prior inconsistent statements;
- 8 (f) all claims in Ground 18 **other than** the claim in Ground 18(b)
9 that petitioner was denied effective assistance of counsel when
10 trial and appellate counsel did not argue that the February 11,
11 2004, conviction did not constitute a prior offense under N.R.S.
12 207.010 for purposes of habitual criminal enhancement; and
- 13 (g) any and all claims remaining in Ground 23 following upon the
14 Court's dismissal of Ground 23 in part as redundant of a claim
15 in Ground 18(b).

16 IT FURTHER IS ORDERED that respondents shall file an answer to the remaining claims
17 within **thirty (30) days** of entry of this order and that petitioner shall have **thirty (30) days** from service
18 of the answer within which to mail a reply to the answer to the Clerk for filing.

19 **Due to the age of the case, extensions of time will be considered only for extraordinary**
20 **circumstances. In the event of scheduling conflicts with other matters in this Court, any request**
21 **for extension of time should be sought in the later-filed case.**

22 DATED this 19th day of November, 2012.



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25 LARRY R. HICKS
26 UNITED STATES DISTRICT JUDGE
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